EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS
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ENERGY AND COMMERCE COMMITTEE
RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET
RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–2107

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September 30, 2002

The Honorable Billy Tauzin
Chairman
Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jeff Bingaman
Chairman
Energy and Natural Resources Committee
364 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Tauzin and Chairman Bingaman:

As you know, at the September 19, 2002 meeting of the House and Senate conferees on H.R. 4, I offered an amendment to strike Section 136 from the House offer. Unfortunately, that amendment was rejected by the House conferees on a party-line vote, and is now part of the House electricity offer that is currently pending before the Senate conferees. I am writing you today to call your attention to some recent developments that I hope will lead you and the other House and Senate conferees to reconsider your support for Section 136.

You will recall that Section 136 provides that any company that was, as of December 31, 2001, an affiliate of a holding company (as defined in PUHCA), and held investment securities (as defined under the Investment Company Act of 1940) of one or more companies engaged directly or indirectly in the electric or gas utility business, or other permitted business activities, shall be exempt from regulation as an Investment Company.

Under this provision, any such company could operate as a mutual fund or other type of investment company and be totally exempt from SEC oversight and regulation under the Investment Company Act.

The supporters of this special-interest provision have indicated that it is aimed at benefiting a single company, a Kansas-based company called Westar Energy, a utility holding formerly known as Western Resources. Apparently, Westar decided several years ago to diversify into the burglar alarm business and is now seeking to spin off its failed investment in that company. Westar reportedly claims that it needs an exemption from the Investment Company Act because of its holdings in this burglar alarm company might bring them within the definition of an investment company should PUHCA be repealed.

I believe there are significant risks involved in granting such a special-interest exception. In 1996, Enron came to Congress when it was considering the National Securities Markets Improvement Act, and it sought an exemption from the Investment Company Act. Mr. Dingell and I resisted this provision, and it was not added to the final bill – though the Majority insisted on report language encouraging the SEC to favorably consider on Enron's request. The following year, in 1997, Enron sought and obtained an exemption from the SEC from the Investment Company Act of 1940, which it exploited to engage in activities that would have been prohibited if it had been regulated as an Investment Company.

The SEC has informed me that the type of Investment Company Act exemption proposed in Section 136 of the House offer is significantly broader than the exemption granted Enron back in 1997 and it appears that literally hundreds of unregulated investment companies could be created if this provision became law. But if the prospect of creating hundreds of unregulated investment companies isn't enough to disturb you, just consider the implications of this proposed loophole with respect to Westar, and its ratepayers. In this regard, I believe that there is new information that should lead you to reject adoption of this provision.

First, the Kansas Corporation Commission (KCC) -- which regulates public utilities in that state -- has now come out in opposition to the proposed exemption and has issued an order to block the transaction which the exemption is designed to facilitate. In the attached letter, KCC Chairman Bill Graves states "The Commission has issued orders prohibiting Westar from splitting off its unregulated businesses from its regulated electric companies." Chairman Graves notes that "the Commission has found that Westar inappropriately allocated over one billion dollars of debt related to its unregulated businesses to its electric utility operations" and that "until that inequity is corrected, the Commission has banned Westar from any restructuring activity that would allow the unregulated businesses to become separated from the debt that was incurred on their behalf."

KCC Chairman Graves goes on to explain in his letter that "The proposed exemption to the Investment Company Act would have the effect of removing an important obstacle to Westar splitting its companies and leaving non-utility debt with the utility companies. As a result, I am concerned that the proposed exemption has serious implications for the Commission's effective regulation of Westar and protection for the ratepayers of Kansas."

Chairman Graves notes "The proposed exemption is particularly inappropriate at this time because of the impaired financial health of Westar, as noted by the credit rating services." He therefore recommends that "continued oversight of Westar by both the Federal Energy Regulatory Commission and federal securities regulators, as well as the KCC," in order "to protect the ratepayers of retail electric service in Kansas and the shareholders of Westar." Finally, he concludes that "At a time of financial stress on Westar, it is unnecessarily risky to retreat from historical federal oversight that protects consumers and shareholders of Westar."

I am attaching a series of articles which recently appeared in the Kansas press detailing the KCC's recent actions to block Westar's proposal to split off its unregulated businesses from its regulated businesses, as well as a recent article reporting that Westar's chief executive, David Wittig, stands to receive a $10-15 million golden parachute if the proposed transaction is completed. According to the article, Doug Lake, the company's Vice President for Strategy, would receive between $7.6 and $12 million if this transaction is completed. Westar's electricity ratepayers, however, would be left holding the bag on millions of dollars of debt.

Secondly, you and other House and Senate conferees should be aware that Westar is currently the subject of a federal grand jury investigation. While the full details of the nature and scope of this investigation have not yet been publicly revealed, in a September 27th 8-K filing with the SEC, Westar has disclosed that:

> "On September 17, 2002, the Company was served with a federal grand jury subpoena by the United States Attorney's Office in Topeka, Kansas. The subpoena seeks documents and testimony concerning the use of aircraft leased by subsidiaries of the company and annual shareholder meetings. Since that date, employees of the Company and of the Company's subsidiary responsible for the operation of the aircraft have received additional subpoenas seeking documents and testimony concerning use of the aircraft, the chief executive officer of the Company, and the Company generally. The Company intends to cooperate with the United States Attorney's Office in this matter.
>
> "The Board of Directors of the Company has appointed a Special Committee consisting of Frank J. Becker, Charles Q. Chandler, IV, and John C. Nettels, Jr., to investigate certain matters relating to the grand jury investigation. The Special Committee has retained as its counsel the law firm of Debevoise & Plimpton, including Mary Jo White, the former United States Attorney for the Southern District of New York and chair of the firm's litigation department."

It is not too late for my Republican colleagues to reverse its earlier decision to grant Westar a new, ill-advised legal loophole. This company is is under federal investigation and the state commission with regulatory authority over this company has come out strongly in opposition to the provision, as well as the underlying business transaction it is aimed at advancing. Accordingly, I strongly urge the House Republican conferees to reconsider their support for this ill-considered loophole and I urge the Senate conferees to resist adoption of this Enron-like loophole.

Sincerely,

Edward J. Markey

Edward J. Markey
Member of Congress

Enclosures

Cc: Representative Bilirakis
Representative Barton
Representative Upton
Representative Stearns
Representative Gillmor
Representative Burr
Representative Dingell
Representative Waxman
Representative Boucher
Representative Gordon
Representative Rush
Senator Hollings
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Senator Grassley
Senator Nickles
Senator Lott
Senator Craig
Senator Campbell
Senator Thomas

September 27, 2002

Honorable Edward J. Markey, Congressman
United States House of Representatives
2108 Rayburn HOB
Washington, DC 20515-2107

Dear Congressman Markey:

In response to your request, I am providing you with my position on Westar Energy, Inc.'s ("Westar") proposal to seek an exemption from the Investment Company Act of 1940 within the context of the energy bill currently being negotiated by a House-Senate conference committee as H.R. 4. I am concerned about the proposed exemption, particularly in light of a pending Kansas Corporation Commission ("Commission" or "KCC") investigation into Westar and its relationships with its affiliate companies.

The Commission has issued orders prohibiting Westar from splitting off its unregulated businesses from its regulated electric companies. Among other things, the Commission has found that Westar inappropriately allocated over one billion dollars of debt related to its unregulated businesses to its electric utility operations. Until that inequity is corrected, the Commission has banned Westar from any restructuring activity that would allow the unregulated businesses to become separated from the debt that was incurred on their behalf.

The proposed exemption to the Investment Company Act would have the effect of removing an important obstacle to Westar splitting its companies and leaving non-utility debt with the utility companies. As a result, I am concerned that the proposed exemption has serious implications for the Commission's effective regulation of Westar and protection for the ratepayers of Kansas.

The proposed exemption is particularly inappropriate at this time because of the impaired financial health of Westar, as noted by the credit rating services. I believe that continued oversight of Westar by both the Federal Energy Regulatory Commission and federal securities regulators, as well as the KCC, is needed to protect the ratepayers of retail electric service in Kansas and the shareholders of Westar. At a time of financial stress on Westar, it is unnecessarily risky to retreat from historical federal oversight that protects consumers and shareholders of Westar.

For these reasons, the Commission encourages you to vote against the conference committee report on H.R. 4 or any other effort to approve the proposed exemption. Please feel free to contact me if you have any questions or need additional information.

Sincerely,

John Wine

Cc: Honorable Sam Brownback, Senator
Honorable Pat Roberts, Senator
Honorable Jerry Moran, Congressman
Honorable Jim Ryan, Congressman
Honorable Todd Tiahrt, Congressman
Honorable Dennis Moore, Congressman

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

Current Report

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

September 27, 2002 (September 17, 2002)
Date of Report (Date of earliest event reported)

WESTAR ENERGY, INC.

(Exact name of registrant as specified in its charter)

Kansas	**1-3523**	**48-0290150**
(State or other jurisdiction of incorporation or organization)	**(Commission file number)**	**(I.R.S. Employer Identification No.)**

818 South Kansas Avenue, Topeka, Kansas 66612
(Address of principal executive offices)

(785) 575-6300
(Registrant's telephone number, including area code)

WESTAR ENERGY, INC.

Item 5. Other Events

On September 17, 2002, the Company was served with a federal grand jury subpoena by the United States Attorney's Office in Topeka, Kansas. The subpoena seeks documents and testimony concerning the use of aircraft leased by subsidiaries of the company and annual shareholder meetings. Since that date, employees of the Company and of the Company's subsidiary responsible for the operation of the aircraft have received additional subpoenas seeking documents and testimony concerning use of the aircraft, the chief executive officer of the Company, and the Company generally. The Company intends to cooperate with the United States Attorney's Office in this matter.

The Board of Directors of the Company has appointed a Special Committee consisting of Frank J. Becker, Charles Q. Chandler, IV, and John C. Nettels, Jr., to investigate certain matters relating to the grand jury investigation. The Special Committee has retained as its counsel the law firm of Debevoise & Plimpton, including Mary Jo White, the former United States Attorney for the Southern District of New York and chair of the firm's litigation department.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Westar Energy, Inc.

Date: September 27, 2002

By: /s/ Paul R. Geist
Paul R. Geist, Senior Vice President
and Chief Financial Officer

Home > News > Business

Regulators to order Westar restructuring

Ratepayers need to be protected from debt, KCC says

Last Modified:
1:36 a.m. 9/26/2002

By Jim McLean
The Capital-Journal

Westar Energy must be restructured so that ratepayers aren't forced to pay for billions of dollars of debt racked up by the company's non-utility businesses, state regulators said Thursday.

John Wine and Cynthia Claus, KCC commissioners

Members of the Kansas Corporation Commission -- meeting publicly for the first time to discuss the results of their ongoing investigation into Westar's financial condition -- said they would issue an order in October that would likely direct the company to create a new subsidiary for its electric operations, which serve about 645,000 Kansas customers.

The order also would force Topeka-based Westar to reallocate its $3.2 billion debt, shifting most of it from the utilities to the unregulated businesses that the company is hoping to spin off to investors.

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"I don't want to be in the business of telling this company or any other company how to run their unregulated businesses," said John Wine, the KCC's chairman. "But to the extent that it has an impact on ratepayers, as it would in the plan of this company, then we have jurisdiction and we have a duty to step in."

Wine said the order also could require Westar's top executives, whom consumer advocates have said are paid too much, to

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remove themselves from direct oversight of the utility operations.

"That would be out there for us to consider in drafting this order," Wine said, acknowledging that commissioners still were discussing how far state law allowed them to go in forcing a restructuring of Westar.

Distancing the current management from the utility operations has been a goal of the Citizens Utility Ratepayers Board, a small state agency that represents residential and small business consumers.

"The history of this company shows that their interest has always been these unregulated assets," said Walker Hendrix, the agency's lead attorney. "That's why they've leveraged the utility assets."

Commissioners also left open the possibility of ordering a management audit if the company didn't comply with the KCC directives or challenged them in court.

"We do have very clear authority to do that," said Commissioner Cynthia Claus, who said management's recent unwillingness to work with the KCC "calls for tough measures."

Westar spokesman Doug Lawrence didn't return calls from The Topeka Capital-Journal. But he told the Associated Press that the company was pleased that the KCC rejected proposals from consumer advocates and others that would have required the company take various actions from selling its utilities to cutting its dividend.

"We are pleased that the commission focused on the substantive issues related to serving our customers responsibly," Lawrence said. "We clearly share mutual goals of reducing debt."

A partner in a New York investment firm that holds about 2 million shares of Westar stock said the KCC should have more confidence that the company and David Wittig, its

Audio

Brian Moline, of the Kansas Corporation Commission
- Not an acceptable alternative
- Problem with alternative plans
- Possible serious structural problems
- Ratepayers can't share in gain, pain

Brian Moline, of the Kansas Corporation Commission
- A dangerous path to go down
- The role of the commission

John Wine, of the Kansas Corporation Commission
- An unfair, unrealistic plan
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- A duty to ratepayers

James Zakoura, attorney representing Westar's large business customers
- Unsure of company's willingness

Walker Hendrix, general counsel for the Citizens Utility Ratepayers Board
- The commission's options

Rosemary Foreman, KCC spokeswoman
- Proper allocation of debt

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- Discuss Westar Energy's

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- Aug. 20, 2002 -- KCC asked to audit Westar management
- July 12, 2002 -- KCC closes hearing on Westar Energy's financial status
- July 11, 2002 -- KCC chairman critical of Westar's questioning
- July 10, 2002 -- Westar gets OK to sell ONEOK stake
- July 9, 2002 -- Wittig testifies before KCC
- July 4, 2002 -- Westar executive calls for KCC action on plan for debt
- July 3, 2002 -- Westar's finances under scrutiny
- July 2, 2002 -- Westar looks at plan to reduce overall debt
- June 29, 2002 -- Westar management, salaries denounced
- June 8, 2002 -- KCC refuses to delay Western hearing
- May 30, 2002 -- Western executive criticizes ONEOK
- May 24, 2002 -- Westar looking to sell its ONEOK stake
- May 18, 2002 -- Western earns funds, fights what analysts say
- Nov. 9, 2001 -- Changes, silence worry lawmakers
- Nov. 7, 2001 -- Utility's proposal to reduce debt called speculative
- Oct. 17, 2001 -- Reports say Western plans to downsize executive staff
- July 24, 2001 -- Editorial: Western Resources -- Company off course?
- July 1, 2001 -- Shareholders angry, look to speak out

embattled chairman and chief executive officer, are committed to paying down debt.

"They should have confidence that he's announced a plan and that he's going ahead with it," said Richard Haydon, of Omega Advisors. "He's committed."

Wittig is attempting to sell Westar's nearly $1 billion ownership stake in ONEOK Inc., a Tulsa, Okla.-based natural gas company that among other things operates the Kansas Gas Service Co. He has pledged to use the proceeds of the sale to pay down Westar's debt.

But it isn't that simple.

The way the company is currently structured, the proceeds from the sale of the ONEOK stock would flow first to an unregulated subsidiary, Westar Industries. It would then give the money to the parent company -- Westar Energy -- to pay down debt. But in exchange, Westar Industries would receive millions more shares of the parent company's stock -- enough to acquire a controlling interest.

Commissioners made it clear Thursday that they wanted to put an end to such "abusive accounting entries." They said the October order would likely direct the company to collapse Westar Industries back into the parent company. In addition to the ONEOK stock, Westar Industries has an 85 percent interest in Protection One, a monitored security company that has recently stabilized its operations after posting big losses for years.

Those loses, consumer advocates charge, were the major reason that Westar Energy's debt more than doubled between 1995 and 2001.

"The utility in our opinion is clearly subsidizing the debt of the non-regulated businesses and that's not

Related links
• Westar Energy
• Kansas Corporation Commission

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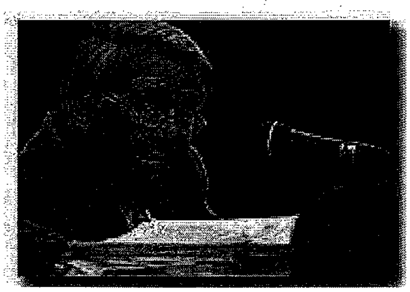
right," said James Zakoura, an attorney representing a group of large utility customers seeking a rate decrease.

Zakoura and the KCC said only $1.5 billion of Westar's overall debt -- which the KCC estimates at $3.6 billion and the company puts at $3.2 billion -- should remain with the utility operations. The rest, they said, should be shouldered by Westar's shareholders and the company's unregulated businesses.

"Ratepayers don't share in the gains, and they shouldn't share in the pain," said Commissioner Brian Moline.

Moline was the only one of the three commissioners who said he wanted to immediately proceed with a management audit. He said he was disturbed by the fact that top Westar executives, including Wittig, were either "unable or unwilling" to answer basic questions during a hearing in July.

"Either conclusion that you draw is very alarming," Moline said. "I think we should go forward with an audit."


Brian Moline, KCC commissioner

Wine said he might agree if the investigation was narrowly focused, but said he preferred to wait and see how Westar executives reacted to the October order.

Westar's stock closed regular trading Thursday at $10.25 per share, up 42 cents from Tuesday when it closed at its lowest point in the decade since KPL and KGE merged to form Westar's corporate predecessor, Western Resources.

(The Associated Press contributed to this story.)

Jim McLean can be reached at (785) 233-7470 or jmclean@cjonline.com.

The KCC's Westar probe

The following are key dates in the Kansas Corporation Commission's investigation into Westar Energy's financial condition:

May 18, 2001: KCC orders an investigation into Western

Resources' plan to split off its unregulated businesses into a new company.

July 20, 2001: KCC blocks Western's corporate restructuring plan, saying it would shift too much of the company's $3.2 billion debt to utility ratepayers.

July 25, 2001: KCC rejects Western's request for a $151 million rate increase and instead orders a rate reduction.

Nov. 6, 2001: Western files a modified version of its restructuring plan with the KCC, saying it will generate $1 billion to pay down debt.

May 30, 2002: Western, now called Westar Energy, puts the restructuring plan on hold and decides instead to sell its almost $1 billion stake in ONEOK Inc., a Tulsa, Okla.-based natural gas company, to pay down debt.

July 9, 2002: Westar chairman David Wittig, testifying at a KCC hearing, says the company is committed to paying down debt and restoring its credit rating to investment grade.

July 9, 2002: KCC approves the sale of Westar's ONEOK holdings provided the company uses the proceeds to reduce debt.

Aug. 19, 2002: Consumer advocates and others urge the KCC to launch a formal investigation of Westar's management, charging it has used money generated by the utilities to subsidize unregulated subsidiaries.

Aug. 22, 2002: ONEOK declines to repurchase its shares from Westar, which a few days later announces it will look for another buyer.

Sept. 23, 2002: Westar's board votes to reduce executive perks, including much-criticized golden parachute agreements.

Sept. 26, 2002: The KCC concludes that Westar's management has unfairly assigned unregulated debt to its utility operations.

What's next

The KCC signaled Thursday that it will issue an order in October that will direct the company to reallocate its debt and may require its current management to distance itself from the utility operations.

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Business

Posted on Fri, Sep. 27, 2002

THE KANSAS CITY STAR.

Regulators say Westar reorganization will be ordered

By STEVE EVERLY
The Kansas City Star

State regulators signaled Thursday that they intend to order a reorganization of Westar Energy Inc. to reverse management's bid to load debt onto the company's two regulated electric utilities.

The Kansas Corporation Commission won't issue such an order until October. But in an administrative meeting intended to give staff members direction on how to draft the order, all three commissioners agreed Thursday that Westar was trying to make ratepayers responsible for debt incurred from spending on various unregulated ventures.

The order will give specifics on what needs to be done to fix that problem and might even include a reorganization that would keep the parent company's current management out of the day-to-day management of the utilities, formerly called KPL and KGE.

The order will come just over a year after regulators told Westar -- then called Western Resources -- that it needed to correct its allocation of debt. The commissioners, who showed at various times during the meeting Thursday that they had lost patience with the company's management, said that Westar had failed to do the job.

"Frankly, this company doesn't take hints," said John Wine, the commission's chairman.

Another commissioner, Cynthia Claus, said, "It calls for tough measures."

Westar officials quickly left after the meeting adjourned, and calls to Westar asking for comment were not returned. Westar will have the option to appeal October's order to the courts.

The commissioners showed that they were clearly in a mood to reverse Westar decisions that they thought hurt utility customers. Commissioners appeared to be receptive to ordering a separate subsidiary for the utilities and dissolving Westar Industries, a subsidiary that oversees the company's unregulated investments.

The indications that the Kansas Corporation Commission was prepared to act pleased Westar's critics.

"I thought the commission came forth with a bold and decisive decision," said Walker Hendrix, head of the Citizens' Utility Ratepayer Board, which is charged with representing consumers.

Westar Industries was established to oversee the company's unregulated ventures, which include majority ownership of Protection One Inc., a monitored security firm that is financially troubled. Westar's stake in the gas company Oneok Inc., which the company is trying to sell, also was folded into Westar Industries.

The former KPL and KGE were kept in Westar Energy, and an analysis by in-house advisers to the three commissioners found it had been burdened with most of the company's $3.6 billion in debt. According to the analysis, only $1.5 billion of that total was used to finance utility operations; the balance came from unregulated investments.

But according to a memorandum by the advisers, the company is attributing only $500 million of the debt to the unregulated businesses housed in Westar Industries, leaving most of the debt with the regulated utilities. Westar's figures differ slightly, claiming $3.2 billion in total debt with $2.9 billion allocated to the regulated utilities.

The reliance on utility ratepayers to shoulder most of the debt has sparked criticism for months.

"Our position is it is a clear subsidy," said James Zakoura, an attorney for Kansas Industrial Consumers, a group of large commercial utility customers. Zakoura said he was pleased with the direction the Kansas Corporation Commission was headed.

Besides establishing a separate subsidiary for the utilities, the commissioners appear to be leaning toward dissolving Westar Industries. That would allow more flexibility in selling assets and reallocating debt. In addition, it would reverse the transfer of $1.6 billion in equity from Westar Energy to Westar Industries.

A management audit is also being considered to discover how Westar got into its difficulties even as its top executives earned multimillion-dollar salaries. The advisers' memorandum said senior management lacked a knowledge of the company's accounting

KCC proposes replacing Westar Energy management

Eds: UPDATES throughout with KCC considering Westar restructuring; trims; NO PICKUP
ccjfclmtlcjdhstf
By JOHN HANNA
Associated Press Writer
TOPEKA, Kan. (AP) - State regulators agreed Thursday that they should order a restructuring of Westar Energy Inc., possibly including replacing the current managers of its electric operations.
The Kansas Corporation Commission didn't take any formal action on the matter Thursday morning. But commissioners agreed that Westar has tried to allocate too much of its debt to its electric operations, and that they want to require Westar to put those operations into a separate subsidiary.
Commissioners have said they believe Westar is shoving debt from its non-electrical operations onto its power customers.
"We can issue any order that is supported by the record, and we have a very extensive record related to management," said KCC chairman John Wine. "That would be out there, and that would be available for us to consider in drafting this order."
Westar provides power to about 636,000 Kansas customers, making it the state's largest electric company. But it also has unregulated businesses, including an 85 percent interest in the Protection One security alarm business.
Commissioners did not discuss who would manage the proposed electric subsidiary, and whether the current executives, including Westar president, chairman and chief executive officer David Wittig, would be in charge of the utilities.
The commission expects to issue an order in October on Westar's finances and management.
The biggest issue for the three commissioners was how Westar has allocated its assets and debts between its electric operations and its other interests. The commission put Westar's debt at $3.6 billion, and said only $1.5 billion of that could be attributed to utility operations. Instead, the company has allocated $3.1 billion in debt to its electric operations, the KCC said.
Westar puts its debt at $3.2 billion, and attributes $2.9 billion of it to the utilities.
Whatever the figures, the allocation is an issue for commissioners because they worry that ratepayers will be forced to pick up the costs of paying off debt not incurred for their benefit.
"That kind of misallocation is inappropriate and unacceptable," Wine said.
"Ratepayers don't share in the gains, and they shouldn't share in the pain," commissioner Brian Moline said.
The Kansas Corporation Commission has been reviewing Westar Energy Inc.'s finances for months and had two weeks of public hearings in July. Among other things, the commission wants Westar to pay down its $3.2 billion in debt.
The commission's meeting came after a flurry of announcements by the company this week.
The latest one, made Wednesday, was that Westar and Public Service Company of New Mexico settled litigation in New York state court over a failed $4.4 billion deal they had announced in 2000.
Westar also said it did not plan to cut dividends to stockholders from the $1.20 per share, despite an accounting charge this quarter of $40 million or 33 cents a share.
The Citizens' Utility Ratepayers Board, which represents residential and small-business consumers, has suggested a cut, to free up more money to pay off debt. But Walker Hendrix, CURB's consumer counsel, acknowledged that a dividend cut might cause Westar's stock to tumble.

On the Net:

Business

Posted on Fri, Sep. 27, 2002

The Wichita Eagle

Westar may have to restructure

The Kansas Corporation Commission may force the move to keep utility customers from paying off the debts from Westar's other ventures.

BY DION LEFLER
The Wichita Eagle

TOPEKA - State utility regulators indicated Thursday that they will order a sweeping restructuring of Westar Energy to protect its 636,000 electricity customers in Kansas from having to pay off more than $2 billion of the company's non-utility debt.

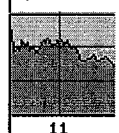
Nearing the end of an 18-month investigation of the company's finances, all three members of the Kansas Corporation Commission agreed that they should force Westar to separate its state-regulated utilities from its unregulated ventures such as home security. Under the commission's plan, each division would be responsible for its own debts.

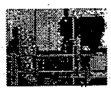
That, they said, would shield the utility customers from having to pay back money that was borrowed for Westar's side businesses, such as its money-losing 85 percent ownership of the Protection One alarm company.

"Ratepayers don't share in the gain; they shouldn't share in the pain," when Westar invests outside its core utility business, said commission member Brian Moline.

The commissioners also decided not to immediately pursue a deeper investigation of Westar's operations, although that had been recommended by the commission staff and consumer advocates who had joined the case.

Westar is "encouraged" by the commissioners' statements, said





company vice president Doug Lawrence.

"We were particularly pleased the commission stayed focused on substantive issues focusing on our customers," Lawrence said.

The commission's plan to divide Westar is "not inconsistent with the same thing we're trying to achieve," he said.

Commissioners were acting on a new report from their lawyers that said that Westar has amassed $3.6 billion in corporate debt, only $1.5 billion of which had been spent on utility operations.

"The remaining $2.1 billion of debt was used to finance (Westar's) unregulated operations, including Protection One," the report stated. "However, Westar has attributed only $0.5 billion of debt to unregulated businesses."

That has to change, said commission chairman John Wine.

"We have to make it clear to this and other companies that this kind of misallocation is unacceptable," he said.

Full details of the restructuring were not provided at Thursday's commission meeting. The final plan will emerge in a written order expected by mid- to late October.

Consumer representatives said they were generally happy with the commission's course.

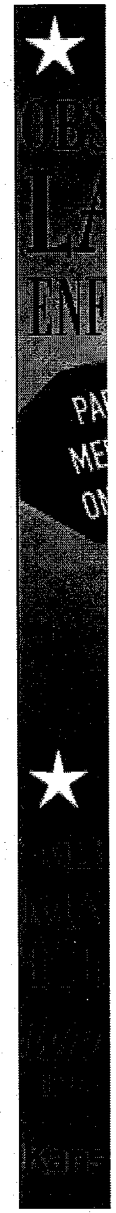
"It's pretty much along the lines of what we suggested," said Walker Hendrix, consumer counsel for the Citizens' Utility Ratepayer Board, the state agency that represents residential and small-business utility consumers. "It's clear they're going to take some fairly strong action."

Thursday, the commission appeared ready to mandate a new structure in which Westar's Northern and Southern divisions -- formerly KPL and KGE -- would have a separate identity and a management team focused solely on utility issues.

The commissioners said Westar would be free to manage its non-utility businesses as it sees fit, as long as it does not drain financial resources away from the utility operations.

The split structure would make it easier for commission staff to monitor the movement of money within the company and prevent misallocation of assets and debts, the commission lawyers' report said.

To get to that structure, the commission may order Westar Energy to undo past transactions that provided assets to Westar Industries and shifted debts to the utilities.



Or, the commission could order Westar Energy to dissolve Westar

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Business

Posted on Tue, Sep. 24, 2002

The Wichita Eagle

Payout for top Westar execs cut, still millions

If CEO David Wittig and his N 2 man succeed in splitting the company, their retirement and severance plans will be smaller, but they won't be small.

BY DION LEFLER
The Wichita Eagle

Westar Energy shrunk the golden parachutes of its two top executives Monday.

But the company's chief executive, David Wittig, still stands to receive at least $10 million to $15 million, plus perks, if he succeeds in his plan to split the company and then leaves Westar, according to a Wichita Eagle analysis of his employment agreement and other documents.

The company's No. 2 man, vice president for strategy Doug Lake, would receive between $7.6 million and $12 million, the calculations showed.

Those severance and retirement benefits represent a substantial reduction since Wittig's and Lake's contracts were last renegotiated in 2000.

"It will cost us money," Wittig said. "It will save the company money."

Wittig said he and Lake worked with the company's board of directors to reduce their severance benefits to avoid the kind of controversy that has dogged General Electric Co. in the wake of revelations of multimillion-dollar retirement benefits lavished on former CEO Jack Welch.

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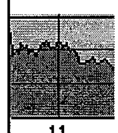

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Wittig said Westar also wants to get ahead of any possible corporate reforms that may be ordered by the federal Securities and Exchange Commission.

"We want to make sure we're doing everything before everyone else does it," he said.

The changes in the contracts come three days before a meeting of the Kansas Corporation Commission, which has ordered the company to come up with a plan to reduce its approximately $3 billion debt and improve the company's credit rating from its current junk-bond level.

At the Thursday meeting, commissioners will decide, among other issues, whether to order a management audit of Westar. Such an audit would bring in an outside examiner to study the company's operations to ensure it is managed efficiently to protect the interests of the company's 636,000 Kansas electric customers.

Wittig said the contract revision has been in the works for some time and was not timed to coincide with the commission deliberations.

Wittig's and Lake's contracts were renegotiated in 2000when the company was poised to sell its electric operations to Public Service Company of New Mexico. But that agreement dissolved amid litigation.

Under the provisions of Wittig's year 2000 separation agreement, he would have received $20.7 million in severance and retirement payments over 15 years -- $31.2 million over 30 years if he lives that long -- if he had left Westar Energy within 90 days of a change of control.

Calculation of his new contract shows a reduction in the 15-year payout to slightly more than $10 million and the 30-year amount drops to about $15.3 million.

Under the old contract, Lake would have received $13 million over 15 years and about $19.5 million over 30 years. His new contract cuts those amounts to $7.6 million in 15 years and $11.9 million in 30.

The new contract retains language requiring that the executives receive lump sum payments equal to 2.99 times their annual salaries and bonuses, plus $50,000 to help them search for another job.

In addition to the cash benefits, both executives would receive ongoing medical benefits and three years of financial planning and legal services if they separate from Westar.

Both also have multiple millions of dollars worth of stock and options that they would take with them.

In addition to reducing retirement payments and decelerating the
vesting of some of the executives' stock shares, the board eliminated

Financial News

Reuters Market News

S&P comments on Westar Energy

Thursday September 26, 2:37 pm ET

(The following statement was released by the ratings agency)

NEW YORK, Sept 26 - Standard & Poor's Ratings Services noted today that Westar Energy Inc.'s (NYSE:WR - News; BB+/Negative/--) announcement that third-quarter 2002 results are expected to include a noncash charge (currently estimated at $40 million) resulting from marking to market the amount of a liability arising from a call option related to its $400 million 6.25% senior unsecured notes issued August 1998 and a possible cash payment of $69 million if the call is exercised, will not affect current ratings. More crucial to credit quality will be Westar's sale of its ONEOK Inc. stock, with proceeds of roughly $700 million to $800 million being applied toward debt reduction.

Although the charge may be offset by a $54 million tax refund, Westar's capital structure cannot withstand additional decimation at the current ratings level. Earlier this year, Westar recorded a net charge of $657 million related to impairment of affiliate Protection One Alarm Monitoring Inc.'s goodwill. As a result, total debt to capital is now nearly 73%, compared with 62% at the end of 2001. Other measures of credit protection are also frail. Therefore, the sale of Westar's ONEOK investment is needed to achieve ratings stability.

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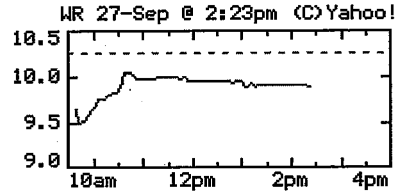

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